

**TO:** CLIENTS  
**SUBJECT:** HOUSING STABILITY AND TENANT PROTECTION ACT &  
STATEWIDE HOUSING SECURITY AND TENANT PROTECTION  
ACT OF 2019  
**DATE:** JUNE 20, 2019

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We have prepared this memorandum in an effort to help our clients understand the legislation passed on June 14, 2019, entitled the Housing Stability and Tenant Protection Act of 2019 and the Statewide Housing Security and Tenant Protection Act (“Act”). This Act directly impacts property owners and property managers, for both regulated and unregulated units, inside New York City and throughout the State of New York.

While this memorandum was being prepared, the legislature issued a clean up bill (6571-A) (hereinafter “Clean Up Bill”), which proposes further amendments to the Act. We have addressed key items in the Clean Up Bill, even though as of the date of this memorandum, it has not been signed into law.

### **OVERVIEW**

The Act consists of a total of fifteen (15) Sections, which are labeled alphabetically A thru O.

#### **Part A: Expiration Provisions**

Effective June 14, 2019, the Act eliminates the sunset provisions in the rent control and rent stabilization laws and makes rent regulation permanent.

Prior rent laws had been scheduled to expire every four to eight years to determine whether the housing emergency continued to exist.

#### **Part B: Vacancy and Longevity Increases**

Effective June 14, 2019, the Act eliminates vacancy and longevity increases. The prior law permitted owners to collect a statutory vacancy increase and permitted an increase in the rent based upon the period of time since a vacancy increase.

### **Part C: Rent Guideline Board**

Effective June 14, 2019, the Act prohibits a rent guidelines board (“RGB”) from adopting a vacancy or rent adjustment without prior authorization from the State legislature. An RGB is also prohibited from establishing a rent adjustment based on the current rent of an apartment or on the amount of time that has elapsed since a vacancy increase.

Prior to the statutory longevity and vacancy increases, an RGB would adopt a vacancy increase or an adjustment for apartments renting under certain rent levels.

### **Part D: Luxury Deregulation**

Effective June 14, 2019, the Act repeals high rent vacancy and high rent, high income deregulation. The Clean Up Bill clarifies that any unit that was lawfully deregulated prior to June 14, 2019, shall remain deregulated. The Clean Up Bill also provides that a “421-a building” (Affordable New York) are governed by the law in effect prior to June 14, 2019 and remain deregulated.

The prior law permitted deregulation of apartments where the rent exceeded the threshold for deregulation upon vacancy or where the tenant’s income and rent exceeded the thresholds established in statute.

### **Part E: Preferential Rents**

Effective June 14, 2019, the Act provides that any preferential rent now becomes the base rent upon lease renewal, subject to applicable RGB rates.

Prior law permitted owners to raise the preferential rent to the legal rent upon the renewal of a lease term.

There is an exception in the Act for buildings that have a regulatory agreement that receive federal project based rental assistance may increase the rent upon renewal to an amount greater than the applicable RGB guidelines, so long as there are no warranty of habitability issues.

### **Part F: Rent Overcharge**

Effective June 14, 2019, the Act extends the statute of limitations for overcharge to six (6) years and imposes treble damages for all six (6) years. This Act applies to any claims pending or filed with DHCR or a court on and after the effective date.

The Act permits tenants to file an overcharge claim “at any time” but specifically limits liability for rent overcharges to six (6) years before a complaint is filed. The Act permits the consideration of the rent history as “reasonably necessary” to make an overcharge determination.

The Act eliminates an owner’s ability to avoid the assessment of treble damages by refunding an overcharge and reducing tenant’s rent within the time to respond to the overcharge complaint. The Act also permits treble damages to be assessed solely due to an owner’s failure to file proper or timely initial or annual rent registrations.

Prior law limited assessment of treble damages to two years before an overcharge complaint was filed. Prior law also allowed owners to avoid assessment of treble damages by refunding an overcharge and reducing tenant’s rent within the time to respond to an overcharge claim. That provision has now been eliminated. The changes to rent overcharges are discussed in more detail in **Exhibit “A”**.

**Part G: Rent Stabilization Coverage**

Effective June 14, 2019, the Act extends rent stabilization coverage to all counties within New York State where local legislatures determine that an emergency exists. The Act also permits DHCR to “reconstitute” an existing RGB outside NYC.

Prior law only subjected NYC, Nassau, Rockland and Westchester Counties to rent stabilization.

**Part H: Fuel Cost Adjustment and MBR**

Effective June 14, 2019, the Act prohibits the costs of fuel to be passed along to tenants and modifies the rent increase formula from 1972 for rent controlled tenants. Increases to rent controlled units now will be based upon the average of the last five (5) one year renewal lease increases adopted by an RGB.

The prior law permitted annual increases of up to 7.5%.

**Part I: Owner Use Recovery**

Effective June 14, 2019, the Act modifies recovery of units for owner’s personal use. Owners are limited to recovering one unit for his or her primary residence

and must establish an immediate and compelling necessity. Owners are precluded from recovering a unit where a person lawfully occupying the unit:

- Is sixty two (62) years old; and
- has been a tenant of dwelling unit in building for fifteen (15) or more years;
- or
- has an impairment from an anatomical, physiological, or psychological condition.

Where the owner or purchaser of a building makes a fraudulent statement with respect to the proposed use of the premises and the tenant is required to surrender the unit, the Act creates a cause of action for the tenant. The Clean Up Bill clarifies that the cause of action providing for fraud in an owner's own use proceeding exists only when the tenant was required to surrender the premises under the owner's own use provision.

The prior law permitted an owner to recover one or more apartments and did not require an immediate and compelling need.

**Part J: Not-For-Profit**

Effective June 14, 2019, the Act provides that not-for-profit corporations who rent apartments for use by "vulnerable individuals or individuals with disabilities who are or were homeless or at risk of homelessness" are rent stabilized. However, the terms of leases in existence on June 14<sup>th</sup>, 2019, become stabilized upon lease renewal. The legal rent will be the rent paid for the apartment by prior tenant, increased by an RGB. Affiliated subtenants authorized to use the apartment are deemed tenants.

The Clean Up Bill adds language excluding from the exemption for premises owned or operated by a hospital, etc. or other charitable organization operated on an exclusive not for profit basis permanent housing accommodation with government contracts as of the effective date for vulnerable person, disabled person who are homeless or at the risk of homelessness. Similar to care-out for buildings operated exclusively for charitable purposes.

The prior law permitted temporary exemption from rent stabilization for not-for-profit apartments.

## **Part K: Individual Apartment Improvements (“IAI”) and Major Capital Improvements (“MCI”)**

Effective June 14, 2019, the Act amends the rent increase provisions for IAI's and MCIs.

Rent increases based on IAI's are temporary for thirty (30) years and capped at \$15,000.00. There can be no more than three (3) IAI rent increases over a fifteen (15) year period. Rent increases are based on 1/168 of the cost of the IAI if the building has less than thirty five (35) units and 1/180 if the building has thirty five (35) units or more. A detailed summary of the changes to the IAI's is annexed as **Exhibit “B”**. The Clean Up Bill specifies that the Act's cap on improvements begins with the first improvements made after June 14, 2019.

Rent increases based on MCI's are now temporary for thirty (30) years. The Act requires the DHCR to set a schedule of “reasonable costs” and a ceiling for each MCI improvement. The Act also extends the amortization period to twelve (12) years if the building has less than thirty five (35) units and twelve and one half (12 ½) years if the building has thirty five (35) units or more. DHCR must also audit and inspect 25% of MCI applications to confirm that the work was completed. A detailed summary of the changes to the IAI's is annexed as **Exhibit “C”**.

## **Part L: Reporting Requirements**

Effective June 14, 2019, the Act imposes new reporting requirements on DHCR with respect to the number of rent regulated apartments and activities under the rent laws.

## **PART M: Non-Payment and Holdover Proceedings; Tenant Protections**

Effective June 14, 2019, the Act changes the Real Property Law and Real Property Actions and Proceedings Law, as well as other laws that directly impact how summary non-payment and holdover proceedings are commenced and maintained. Annexed hereto as Exhibit “D” is a detailed analysis of those changes.

## **PART N – Cooperative and Condominium Conversions**

Effective June 14, 2019, the Act repealed the ability of building owners to convert occupied residential buildings to cooperative or condominium ownership pursuant to an eviction plan. At the same time, for non-eviction plans, the percentage of apartments for which subscription agreements or purchase agreements must be signed has been increased from 15% of anyone (insiders or outsiders) to 51% of tenants in occupancy (only insiders). This dramatic increase in the threshold of insiders required to convert an occupied building will likely result in there being no further conversions of occupied residential buildings to cooperative or condominium ownership.

### **Part O: Mobile and Manufactured Homes**

Effective July 14, 2019, a new mobile home tenant Clean Up Bill of rights with new tenant protections, including rent-to-own provisions, and changes in the use of the underlying land were adopted.

### **LEGAL DISCLAIMER**

This memorandum, and its Exhibits, have been prepared to provide preliminary information about the Housing Stability and Tenant Protection Act & Statewide Housing Security and Tenant Protection Act of 2019, (“Act”) and subsequent Clean Up Bill. It should not be relied upon as complete legal advice or opinion concerning any provision of the Act and/or Clean Up Bill. The Act may be subject to further amendment and clarification. Consult your attorney before taking any action in connection with any of the information provided herein.

EXHIBIT A

## Housing Stability and Tenant Protection Act of 2019: Rent Overcharges

<u>Before (Then)</u>	<u>After (Now)</u>
Four (4) year statute of limitations ("SOL").	Six (6) year statute of limitations on damages, although complaint may be filed at any time.
Fraud is an exception to the four (4) year SOL.	Unreliable registrations, failure to file and serve registrations six (6) years prior to a complaint, and where "reasonably necessary", are exceptions to the six (6) year SOL.
No treble damages for failure to file a timely registration.	Treble damages may be imposed for failure to timely file registration.
Overcharge liability limited to four (4) years.	Overcharge liability limited to six (6) years.
Treble damages limited to two (2) years.	Treble damages imposed for entire six (6) years. Owner shall also be assessed costs, attorney's fees and interest.
Owner can rebut presumption of willfulness and avoid treble damages by refunding the tenant prior to the date the Owner's answer is due.	Refunding the tenant prior to the date the Owner's answer is due does not eliminate treble damages.
No prior provision.	New law applies to pending complaints.
Legal regulated rent deemed in overcharge cases to be rent registered 4 years prior to most recent registration statement.	Legal regulated rent deemed in overcharge cases to be the most recent reliable registered rent for a rent-stabilized tenant filed and served on tenant 6 or more years before most recent registration statement.
Rent registered 4 years prior to most recent registration is not subject to challenge after 4 years.	DHCR or court can consider all available rent history that is reasonably necessary to make overcharge determinations.
Owner who has duly registered apartment need not maintain rent records more than 4 years prior to most recent registration.	Owner must maintain records 6 years except where otherwise provided by law, but owner's failure to maintain records does not limit

	DHCR or court authority to examine rent history.
No prior provision.	Courts or DHCR shall consider all available rent history reasonably necessary to investigate and determine rent overcharge complaint.

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## EXHIBIT B

### Housing Stability and Tenant Protection Act of 2019: Individual Apartment Improvements

<u>Before (Then)</u>	<u>After (Now)</u>
<b>AMENDMENTS</b>	
<p><u>What qualifies:</u> Rent adjustment for IAI available for, “an increase in the services” provided to the tenant.</p>	<p><u>What qualifies:</u> Adjustments are now available only for a “substantial modification or increase of dwelling space...or installation of new equipment or improvements or new furniture or furnishings, provided in or to a tenant’s housing accommodation.”</p>
<p>Costs for IAI spending were not capped. Number of IAI’s not capped.</p>	<p>Costs for IAI spending are capped at \$15,000.00 for not more than three (3) IAI’s over a fifteen (15) year period.</p>
<ol style="list-style-type: none"> <li>1. If building has less than 35 units, increase was calculated at 1/40 of the cost of the IAI’s;</li> <li>2. If building has 35 units or more, the increase was calculated at 1/60 of the cost of the IAI’s.</li> </ol>	<ol style="list-style-type: none"> <li>1. If building has less than 35 units, increase was calculated at 1/168 of the cost of the IAI’s;</li> <li>2. If building has 35 units or more, the increase was calculated at 1/180 of the cost of the IAI’s.</li> </ol>
<p>Rent increase was permanent.</p>	<p>Rent increase is temporary and will be removed after thirty (30) years.</p>
<p>For occupied apartments, IAI increases are permitted on written tenant consent.</p>	<p>For occupied apartments, IAI increases are permitted on written, informed tenant consent. DHCR is to create a form for tenant consent.</p>

**DHCR TO ESTABLISH RULES TO IMPLEMENT THE FOLLOWING**

Owner must notify DHCR of all IAI's: DHCR to establish notification/documentation procedures that requires:

1. Itemized list of work performed, description of work, and reason for the work; and
2. Photographic evidence documenting before/after the IAI
3. Records of IAI's must be kept forever.

Work must be completed by licensed contractor

IAI rent increase prohibited if there are any outstanding hazardous or immediately hazardous violations.

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## EXHIBIT C

### Housing Stability and Tenant Protection Act of 2019: Major Capital Improvements

<u>Before (Then)</u>	<u>After (Now)</u>
<p>What qualifies:</p> <ol style="list-style-type: none"> <li>1. Must be deemed depreciable under the IRS, is for the operation, preservation, and maintenance of the structure, and is an improvement which directly or indirectly to the benefit of all tenants.</li> </ol>	<p>What qualifies:</p> <ol style="list-style-type: none"> <li><u>1.</u> MCI must be essential for preservation, energy efficiency, functionality or infrastructure of the entire building, including heating, windows, plumbing and roofing, but shall not be for operational costs or unnecessary cosmetic improvements.</li> <li><u>2.</u> MCI must be depreciable pursuant to the IRS, other than for ordinary repairs, that directly or indirectly benefits all tenants; and no increase shall be approved for group work done in individual apartments that is otherwise not an improvement to an entire building.</li> </ol>
<p>Owner was permitted to apply for an MCI rent increase so long as there was a single regulated tenant.</p>	<p>Owner is prohibited from applying for an MCI rent increase if the building's rent regulated tenants constitutes 35% or fewer</p>
<p>DHCR processing did not require audit or inspection.</p>	<p>DHCR must audit and inspect 25% of MCI applications.</p>
<p>Rent increase capped at 6%. Upon vacancy, the Owner can add any remaining balance of the MCI to the legal rent.</p>	<p>Rent increase capped at 2%. Upon vacancy, the Owner can add any remaining balance of the MCI as temporary rent increase.</p>
<ol style="list-style-type: none"> <li>1. If building has less than 35 units, costs amortized at 8 years (96 months);</li> <li>2. If building has more than 35 units, costs amortized at 9 years (108 months).</li> </ol>	<ol style="list-style-type: none"> <li>1. If building has less than 35 units, costs amortized at 12 years (144 months);</li> <li>2. If building has more than 35 units, costs amortized at 12 ½ years (150 months).</li> </ol>
<p>Rent increases were available retroactively to the date the application was filed.</p>	<p>No retroactive rent increase available. Rent increase is only available prospectively 60 days after the date of mailing notice of</p>

	approval to the tenants.
Rent increase was permanent.	Rent increase is temporary and will be removed after thirty (30) years.
Approved costs were based on "actual costs incurred.	DHCR will establish a schedule of reasonable costs and set a ceiling of how much can be recovered based on the type of improvement and its rate of depreciation.
Prohibits MCI rent increase for buildings with <i>current</i> immediately hazardous violations <i>on the date of the application</i> .	Prohibits MCI increase for buildings with outstanding immediately hazardous violations of the Uniform Fire Prevention and Building Code, NYC Fire Code, or NYC Building and Housing Maintenance Codes.
No similar provision.	Application must include an itemized list of work performed and a description or explanation of reason or purpose of the work.

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# **EXHIBIT D**

## **Part M:**

Unless otherwise specified, all sections contained in Part M are effective June 14, 2019. The Clean Up Bill delays the effective dates of amendments to RPAPL 732 (nonpayment petitions), 743 (answers) and 745 (adjournments/rent deposit) 30 days after act becomes effective.

**Section 2: RPL §223-b: Retaliation by a Landlord Against a Tenant:** is amended as follows:

- Extends the presumption of retaliation to one year. Previously the standard was (6) six months
- Adds warranty of habitability claim as a ground for retaliatory eviction.
- Adds complaint under HMC and MDL duty to repair; (good faith actions by tenant)
- Includes landlord's agent as actor who can be accused of retaliation;
- Offering a new lease with an unreasonable rent increase as prohibited conduct allowing for civil action.
- repeals exception to presumption where tenant breached lease or failed to pay rent.

**Section 3: RPL §226-c: Notice of rent increase or non-renewal of residential tenancy:** This newly created section of the RPL is **effective 120 days from enactment** and does the following:

### **Effective 120 days from enactment, this section:**

- requires written notice if landlord seeks to offer renewal of residential lease with rent increases of 5% or more or does not intend to renew lease;

- in absence of notice, prior tenancy and terms continue until notice is given;
- 30 days' notice is required if tenant is in possession less than 1 year and has lease term of 1 year;
- 60 days' notice is required if tenant in possession more than 1 years or lease term of at least 1 year but less than 2 years;
- 90 days' notice is required if tenant in possession more than 2 years or has a lease for more than 2 years.
- The Clean Up Bill extends the length of required notice for residential tenants based on cumulative time of occupancy of the residence or the length of the tenancy in each lease, whichever is longer.

**Section 4: Landlord Duty to Mitigate Damages:** is amended as follows:

- If a tenant vacates the premises in violation of the lease, the Landlord must take reasonable and customary actions to rent the premises at fair market value or at the rate agreed to during the term of the tenancy, whichever is lower.
- The new lease provided to new tenant terminates the prior tenant's lease.

**Section 5: RPL §227-f: Denial on the Basis of involvement in prior disputes prohibited:** This newly created section of the RPL does the following:

- Landlord shall not use any list, court records, or use any knowledge of any prior or pending landlord/tenant proceeding, as a basis to refuse to rent or offer a lease to a potential tenant.
- Violation of this section subjects the landlord to a fine of between \$500-\$1,000.

**Section 6: RPL §232-a: Notice to Terminate monthly tenancy or tenancy from month to month in the city of New York: Effective 120 days from enactment** is amended as follows:

**Effective 120 days from enactment, this section:**

- Changes “lease expires” language to “day designated” in the notice under RPL 226-c.
- See RPL 226-c for notice requirements.

**Section 7: RPL §232-b: Notice to Terminate monthly tenancy or tenancy from month to month outside the city of New York: Effective 120 days from enactment** is amended as follows:

**Effective 120 days from enactment, this section:**

- Permits tenant to given one month’s notice to terminate tenancy.
- Eliminates equivalent right of landlord.
- See RPL 226-c for notice requirements

**Section 8: RPL §234: Tenants’ right to recover attorneys’ fees in actions or summary proceedings arising out of leases of residential property:** is amended as follows:

- A landlord may not recover attorneys’ fees upon a default judgment.

**Section 9: RPL §235-e: Duty of Landlord to Provide a written receipt:** is amended as follows:

- In the event that the landlord does not receive the rent within 5 days of the date specified in the lease agreement the landlord or its agent shall send the tenant a written notice stating a failure to receive such a rent payment. (Annexed hereto as Exhibit E is a proposed sample of the written Notice)

- This written notice must be sent by certified mail.
- In the event that the landlord or its agent fails to provide the tenant with a written notice of the non-payment of rent prior to the commencement of a non-payment proceeding the tenant may use this as an affirmative defense in the proceeding.
- A lessor of a property or their agent who is authorized to receive rent shall be required to provide a tenant with a written receipt upon the payment of rent for a residential premises made in the form of cash or any instrument other than a personal check. The written receipt must contain the following:
  - a) Date;
  - b) The amount of the payment;
  - c) The identity of the premises and the period for which it was paid;  
and
  - d) The signature and title of the person receiving the rent.
- The landlord must provide a receipt to a tenant that requests, in writing, from the landlord a receipt for rent paid by personal check.
- A request for receipts once made by the tenant shall remain in effect during the duration of the tenancy.
- The lessor shall maintain a record of all cash receipts for rent for at least 3 years.
- If the tenant pays the landlord, or an agent of the landlord authorized to receive the rent, personally, the receipt for such rent payment shall be issued immediately to the tenant. However, if the payment is transmitted indirectly, then the tenant shall be provided with a written receipt within 15 days of payment.

**Section 10: RPL §238-a: Limitation on Fees:** This newly created section of the RPL does the following:

- Landlord may only charge for background checks and credit checks and may only charge the actual cost of the credit check or background check up to a maximum of \$20 dollars. It appears that no other fees/requirements are permitted as a condition of obtaining a lease.
- Landlord may not collect the abovementioned fee without providing a receipt to the applicant for the cost of the report from the entity issuing the report.
- If an applicant issued credit check or background check within 30 days of the application, the landlord must accept the report and waive the fee.
- Landlord may not charge or demand any late fee unless the rent is late more than five days from when due.
- Late fees are capped at \$50 or 5% of the monthly rent, whichever is less.

**Section 11: RPAPL §702: Rent in a Residential Dwelling:** This newly created section of the RPAPL does the following:

- This section specifically defines what constitutes the "rent" that can be sought in a summary proceeding. Section 702 specifically defines "rent" as the monthly or weekly amount charged in consideration for the use and occupancy of a dwelling, pursuant to a written or oral agreement.
- Excluded from rent are any and all fees, charges, or penalties the tenant may be responsible for and/or assessed during the course of their tenancy, even if they are specifically authorized by the lease between the parties.
- Charges such as storage, gym, sales tax, electric, repairs, etc. which the tenant is responsible for cannot be sought in the context of a summary proceeding. They can only be sought in a separate action and cannot be part of a proceeding for possession of the apartment.

**Section 12: RPAPL §711: Grounds Where Landlord/Tenant Relationship Exists:** is amended as follows:

- Language was added to specifically state that "no tenant or lawful occupant of a dwelling or housing accommodation shall be removed from possession except in a special proceeding."
- Rent demands must now be made in writing. Oral demands for the outstanding rent are no longer permitted.
- The statute has expanded the notice requirements of a written rent demand from three (3) days to fourteen (14) days.
- RPAPL Section 711(2) now prohibits a landlord from seeking the outstanding rent against a surviving spouse, surviving issue, and/or distributee. The landlord's remedy is solely against the estate of the decedent.
- This section also expands the rights of any occupants that may be in possession after the death of the tenant as the warrant of eviction against the estate of the decedent due to the nonpayment of rent would not permit the landlord to also evict the occupant in possession.
- In such an event, the landlord would then have to commence a separate holdover proceeding to evict the occupant and regain possession of the apartment.

**Section 13: RPAPL §731: Commencement; Notice of Petition:** is amended as follows:

- In non-payment proceedings, tender of full payment of rent to the landlord, at any time before the hearing on the petition, must be accepted by the landlord and dismisses the proceeding.

**Section 14: RPAPL §732: Special Provisions Applicable in Non-Payment Proceedings:** subdivisions 1,2,and 3 are amended as follows:

- For a Non-Payment Proceeding, the Notice of Petition and Petition is now returnable 10 days after its service. Previously the standard was (5) five days.
- Issuance of a warrant shall not be stayed for more than five days, except as provided for by RPAPL §735.
- RPAPL §735 is amended by Section 21 of the Act to allow the court to stay the issuance of the warrant, and the cost for the proceeding, for up to (1) one year. Previously the standard was (6) six months.
- The Respondent has (10) ten days to file an answer or be considered in default, subject to the aforementioned RPAPL §735 as amended.

**Section 15: RPAPL §733: Time of Service:** subdivision 1 is amended as follows:

- For a Holdover Proceeding, the Notice of Petition and Petition must be served at least (10) ten days and not more than (17) seventeen days before the first return date for the proceeding. Previously, the standard was (5) five days and (12) twelve days respectively.

**Section 16: RPAPL §743: Answer:** is amended as follows:

- An answer in a Holdover Proceeding is due at the time the petition is scheduled to be heard. Respondents are no longer required to answer in advance.

**Section 17: RPAPL §745: Trial:** subdivisions 1 and 2 are amended as follows:

- Adjournments, once in court, are a minimum of 14 days, unless all parties, including the Judge, agree to a shorter adjournment.

Previously, the standard adjournment was a maximum of (10) ten days.

- For a rent deposit, there must be (2) two adjournments granted solely at the request of the Respondent, or upon the (60) sixtieth day after the first appearance of the parties in court. When calculating the days, you may only count days expired that are attributable to adjournment requests made by the respondent.

- When calculating days that count towards the (60) sixty day standard, an initial adjournment due to an unrepresented litigant seeking an attorney does not count towards the (60) sixty days period.

- When either (2) two adjournments or (60) sixty days are attributable to the Respondent, and only after a written motion is made by the Petitioner for a rent deposit or use and occupancy, then the court may order a deposit of rent or use and occupancy for sums of rent or use and occupancy that accrue subsequent to the date of the order. Previously, you could obtain an order after oral application and for all rent that had accrued post-petition.

- A defense to the granting of an order for a deposit or ongoing use and occupancy will be if the respondent can establish that the following defenses have been interposed or established:

- a) Petitioner is not a proper party to the proceeding;
- b) Actual eviction, partial eviction or constructive eviction; and the respondent has vacated the premises;
- c) Defense based upon 143b of the social services law;
- d) Defense of existing hazardous or immediately hazardous violations of the housing maintenance code in the respondent's apartment or common area of building;
- e) Colorable defense of overcharge;
- f) Lack of personal jurisdiction

- When calculating the rent or use and occupancy, the court shall not exceed the amount of the regulated rent for the unit or the amount of the tenant's share for any subsidy program, or the amount of the tenant's share under an expired subsidy, unless the tenant has entered into an enforceable new agreement to pay the full lease rent.
- A person on a fixed income, including but not limited to social security income, supplemental social security income pursuant to title sixteen of the federal social security act and title six of article five of the social services law, or pension income, shall not pay more than (30) thirty percent of their monthly income.
- DSS payments and other direct government housing subsidies are not income for the purposes of this section.
- The failure to comply with the court order for deposit of rent or use and occupancy payments results in the court, at its discretion, ordering an immediate trial. Previously you could strike the answer and obtain a possessory judgment.
- The court can extend the deadline for payment upon good cause shown.
- The Act explicitly states that at no time shall a failure to pay use and occupancy or rent deposit result in the dismissal of any of the respondent's defenses or counterclaims, with or without prejudice to their assertion in another forum.

**Section 18: RPAPL §747-a is repealed**

**Section 19: RPAPL §749: Warrants: subdivisions 1,2 and 3 are amended as follows:**

- The court shall state the earliest date that the warrant may execute pursuant to the order of the court.
- Warrant is limited to persons named in the proceeding.

- The court shall command the marshal/sheriff to remove all persons named in the proceeding, provided upon a showing of good cause, the court may issue a stay of re-letting or renovation of the premises for a reasonable period of time.
- Warrants shall provide at least (14) fourteen days notice prior to execution of the warrant.
- The issuing of a warrant no longer cancels the landlord/tenant relationship.
- Nothing can deprive the court from the power to stay or vacate a warrant for good cause shown, or to restore the tenant to possession of the premises subsequent to execution of the warrant.
- Unless the Petitioner can establish that the tenant, in a non-payment proceeding, withheld rent in bad faith, the court shall vacate the warrant upon tender or deposit with the court the full rent due at any time prior to the execution of the warrant.

**Section 20:** Subdivision 4 of RPAPL §751 is repealed

**Section 21:** RPAPL §753: Stay: is amended as follows:

- Extended to areas outside New York City.
- The court may stay the issuance of the warrant, and the cost for the proceeding, for up to (1) one year. Previously the standard was (6) six months.
- Factors the court may consider when granting a stay, or the length of a stay, that would cause extreme hardship if the stay was not granted, include:
  - a) serious ill health;
  - b) significant exacerbation of an ongoing condition;
  - c) a child's enrollment in a local school;

d) any other extenuating life circumstances affecting the ability of the applicant or the applicant's family to relocate and maintain quality of life.

– This section does not apply to a holdover proceeding predicated on an occupant holding over where his conduct is objectionable if the landlord shall establish, by competent evidence to the satisfaction of the court, that such occupant is objectionable.

– After trial in a Holdover proceeding requiring a notice to cure due to the breach of a lease provision, the Court shall grant a (30) thirty day stay of the issuance of the warrant during which time the tenant may cure the breach. Previously this stay was limited to (10) ten days.

**Section 22: RPAPL §756: Stay of summary proceedings or actions for rent under certain conditions:** is amended to extend to all dwellings (utility discontinuance)

**Section 23: RPAPL §757: Eviction as a Result of Foreclosure:** This newly created section of the RPL does the following:

– Requires sealing of court records relating to leases where lessee is removed and the property was the subject of a foreclosure or tax foreclosure.

**Section 24: RPAPL §768: Unlawful Eviction:** This newly created section of the RPL does the following:

– creates cause of action and criminal offense for unlawful eviction.

– using or threatening force;  
– cause of conduct interfering or intended to interfere with ability to use dwelling;

– owner required to restore person unlawfully removed under section upon request.

**Section 25: §7-108 of General Obligations Law:** is amended as follows:

- No rent deposit or advance shall exceed the amount of one month's rent.
- After tenant signs the lease but before they begin to occupy the premises, landlord shall offer the tenant the opportunity to inspect the premises with the landlord or its agents, to determine the condition of the property.
- If tenant requests said inspection, the parties shall execute a written agreement before the tenant begins occupying the unit attesting to the condition of the property and specifically noting any existing defects or damages.
- Landlord may not retain any portion of deposit due to conditions enumerated in the aforementioned agreement.
- After notification from either tenant or landlord of either parties intention to terminate the tenancy, Landlord shall notify the tenant in writing of the tenant's right to request an inspection before vacating the premises and of the tenant's right to be present at inspection, unless tenant terminates the tenancy with less than two weeks' notice.
- The inspection shall be made no earlier than two weeks and no later than one week before the end of the tenancy.
- 48 hours written notice is required with the date and time of the inspection.
- After the inspection, the landlord shall provide the tenant with an itemized statement specifying repairs or cleaning that are the proposed basis for any deductions to the security deposit.
- Tenant shall be able to cure any such condition before the end of the tenancy.
- Any person who violates this provision shall be liable for actual damages. Willful violation of this provision carries punitive damages of up to twice the deposit amount.

**EXHIBIT E**

(CLIENT LETTERHEAD)

(Date)

**BY: CERTIFIED MAIL**

(Name of Lessee)

(Address of Premises)

Re: Failure to pay rent as required by your lease

Dear Tenant:

Please be advised that our records indicate that your rent for the month of (date) was due on (date).

As of today, you are five (5) or more days late in paying your monthly rent, which was due on (date).

You failed to pay \$\_\_\_\_\_, for the month of (date).

Based on your failure to pay your rent when due, you may be served by our attorneys with a fourteen (14) day rent demand.

Please be guided accordingly.

Very truly yours,

By: \_\_\_\_\_  
MANAGING AGENT/OWNER